

## **OFFICE OF SPILL PREVENTION AND RESPONSE**

### **NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Sections 851.8, 851.23, 851.51.1, 851.85, and 852.3 in Chapter 4, Subchapter 5 of Title 14 of the California Code of Regulations (CCR). These sections pertain to tank vessel escort tug requirements.

### **PUBLIC HEARING**

Two public hearings have been scheduled at which any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearings will continue until all testimony is completed, and they will be held as follows:

Tuesday, June 20, 2006  
Port of Long Beach  
Administration Building  
925 Harbor Plaza  
6<sup>th</sup> Floor Board Room  
Long Beach, California  
10 a.m. – 1 p.m.

Thursday, June 22, 2006  
Bay Model Visitor's Center  
2100 Bridgeway  
Sausalito, California  
10 a.m. – 1 pm.

### **SUBMISSION OF WRITTEN COMMENTS**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than 5:00 p.m. on June 22, 2006, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game  
Office of Spill Prevention and Response  
P.O. Box 944209  
Sacramento, California 94244-2090  
Attention: Joy D. Lavin-Jones  
Fax: (916) 324-5662  
E-mail: [jlavinj@ospr.dfg.ca.gov](mailto:jlavinj@ospr.dfg.ca.gov)

### **PERMANENT ADOPTION OF REGULATIONS**

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals - with changes clearly indicated - will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

## AUTHORITY AND REFERENCE

Government Code Section 8670.23.1 grants the Administrator the authority to adopt regulations and guidelines for harbor safety plans in consultation with the port authorities of the harbors and other affected parties. These regulations implement, interpret and make specific Government Code Section 8670.23.1. Government Code Section 8670.23.1(d) requires that the Administrator shall give his highest priority to the development of regulations and guidelines concerning tug escorts.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 1248, Statutes of 1990) (Act), created a comprehensive state oil spill program for marine waters. Among its many provisions, the Act authorized the Administrator to create harbor safety committees for the following five harbors: San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco, San Pablo and Suisun Bays; and Humboldt Bay. Each committee is required to develop harbor safety plans for the safe navigation and operation of tankers, barges and other vessels within the harbors. Government Code Section 8670.23.1 also directed the Administrator to adopt regulations and guidelines implementing tug escort requirements for the specified harbors.

Following the enactment of the above-cited legislation, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing tug escort requirements were drafted to clarify the guidelines for tug escorts at each individual harbor, to address the peculiarities of local waters that call for special precautionary measures. These sections establish clear and consistent guidelines to those parties either affected by their adoption or charged with their enforcement. These regulations were necessary to implement, interpret and make specific Government Code Sections 8670.17.2 and 8670.23.1.

There are existing regulations that require the periodic re-testing the bollard pull (braking force) of tugs used to escort tank vessels, which assist in the event of a propulsion or steering failure. Government Code Section 8670.17.2(b) directs the Administrator to determine that a tug boat is of sufficient size, horsepower and pull capability to perform their escort and assist functions adequately. The bollard pull test measures this capability. Conducting a bollard pull test involves tying up the tug to a dock and pulling against a “bollard” for a specified duration of time to measure the force of the pull. Understandably, boat docks are not receptive to allowing this type of test at their facility. The only location in the Los Angeles/Long Beach area that allowed the bollard pull test closed at the end of March 2005.

There is documentation that the bollard pull of a tug does not appreciably change between tests, which are conducted every three years. The tug will still be adequately able to perform their escort and assist functions for tank vessels even if the Administrator allows an extension of the bollard pull re-test. The Administrator felt that a two year extension (accomplished via an emergency rulemaking) was adequate to give the tug industry enough time to deal with the practical difficulties of complying with the requirement for a bollard-pull re-test, including finding a new site to conduct the test or any alternatives to the test itself.

To this end, representatives from OSPR and tug companies throughout the state formed an Escort Tug Action Team (ETAT) which has examined the issues surrounding the bollard pull re-test and any alternatives that might be acceptable to the industry and OSPR. The ETAT has made its recommendations, and has presented their findings to the five Harbor Safety Committees (HSCs) throughout the state. This rulemaking implements the recommendation of the ETAT. Specifically, this rulemaking proposes the following changes for the five harbors of the state:

**San Francisco Bay Region:** clarifies that the braking force (i.e., bollard pull) shall be re-measured after any modifications or repairs as listed; and proposes an Escort Tug Inspection Program, as an option to the requirement for routine re-testing of the braking force every three years.

**Los Angeles/Long beach Harbor:** clarifies that the braking force shall be re-measured after any modifications or repairs as listed; and proposes an Escort Tug Inspection Program, as an option to the requirement for routine re-testing of the braking force every three years.

**Port Hueneme Harbor:** clarifies that the braking force shall be re-measured after any modifications or repairs as listed. The new measurements must be registered with the Oxnard Harbor District.

**Humboldt Bay:** clarifies that the braking force shall be re-measured after any modifications or repairs as listed. The new measurements must be registered with the Humboldt Bay Harbor District.

**San Diego Harbor:** clarifies that the braking force shall be re-measured after any modifications or repairs as listed. The new measurements must be registered with the U.S. Coast Guard Captain of the Port and the San Diego Harbor Safety Committee

Amendments have already been implemented through an emergency rulemaking (OAL Emergency File No. 06-0224-02E) that went into effect on March 1, 2006. The change enacted in the emergency rulemaking was to allow an extension of up to two years, instead of one, on the bollard-pull re-test for Los Angeles Long Beach Harbor. This was to give the ETAT the time to finalize and complete their review, and to make their recommendation to the Administrator and Harbor Safety Committees. The two-year time frame also gives OSPR the time needed to process the subsequent regulation changes. This rulemaking implements the recommendation of the ETAT review, and is a follow-up to the emergency action.

### SMALL BUSINESS IMPACT STATEMENT\

OSPR has determined that the proposed regulations may affect small businesses.

### COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.55

In accordance with Government Code Section 8574.10, these regulations have been submitted to the Review Subcommittee of the State Interagency Oil Spill Committee for review and comment; and in accordance with Government Code Section 8670.55, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

### DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses:

These amendments give a comparable option to current practices of re-testing bollard pull, and will not result in significant additional costs to private persons or directly affected businesses. The OSPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: NONE.

### BUSINESS IMPACTS

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

### ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

The OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OSPR must determine that no reasonable alternative that has been considered or that has otherwise been identified and brought to the attention of OSPR would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, forms, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish and Game  
Office of Spill Prevention and Response  
P.O. Box 944209  
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

**[www.dfg.ca.gov/ospr/organizational/legal/regulations/regulations.htm](http://www.dfg.ca.gov/ospr/organizational/legal/regulations/regulations.htm)**

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance of this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Ted Mar ((916) 323-6281).